

## REMARKS

The present application included pending claims 1-26, all of which were rejected. By this Amendment, claims 2-3, 5-7, 9-11, 13-15, 17-22 and 25-26 have been amended, while claim 24 has been canceled without prejudice or disclaimer. New claims 27-35 have been added.

The disclosure was objected to because information provided in paragraph [0002] was incomplete. The Applicants have amended this paragraph as set forth above.

Claims 1, 7-9, 15 and 16 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 5,914,712 ("Sartain"). Claims 2-6 and 10-14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sartain in view of U.S. 7,065,778 ("Lu"). Claims 17-26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Sartain. The Applicants respectfully traverse these rejections for at least the following reasons:

### **I. Sartain Does Not Anticipate Claims 1, 7-9, 15 And 16**

Claim 1 recites, in part, "calculating at least one statistic, using the information related to the request [for consumption of media]; identifying media using the at least one statistic; scheduling the identified media according to the at least one statistic [that is used to identify the media], for consumption via the communication network...."

Sartain "relates generally to a method of displaying subscriber selected video information on a television." Sartain at column 1, lines 4-6. In Sartain, a user first requests a video program to be played. *See id.* at column 4, lines 18-19 ("In step 22 of FIG. 1, a subscriber calls a '1-900' number to request that a desired video program be played."). During the request, the call is answered and the user inputs a selection number, which is logged at a central location. In particular, Sartain states the following:

In step 24, the telephone call is answered at the system's central location and the subscriber is prompted to input the selection number, such as "234". This subscriber selection is logged at the central location.

*Id.* at column 4, lines 19-23. Thus, after the video program is selected, the selection is logged. The selection is then transmitted to a service provider and placed in a queue. *See id.* at column 4, lines 28-31 ("In step 28, the selection is transmitted to, for example, the cable television service provider. In step 30, the requested video program is placed in a queue.").

As noted above, Sartain discloses a system and method in which a user requests and selects a video program, after which the selected video is transmitted to a service provider and placed in a queue for viewing. In particular,

When a video is selected for display, that video is placed in a queue which includes all the videos which were selected prior to that subscriber's selection. As each video is selected for broadcast, it is placed in that subscriber's queue such that the order of videos within the queue is usually based on when each of the videos was selected.

*Id.* at column 5, lines 47-53. As noted above, in this embodiment of Sartain, the videos are logged **after** they are selected. However, the Applicants respectfully submit that this embodiment of Sartain does not describe, teach or suggest "**identifying** media using ... at least one statistic," as recited in claim 1. Instead, in the embodiment of Sartain discussed above, a video program is selected/identified by a user; after which the video program is logged. However, the embodiment of Sartain discussed above does not describe, teach or suggest using a statistic to identify the video program.

Sartain later describes using tracking information to provide programming choices.

The present invention provides an elaborate scheme for tracking information related to the selection of video programs. In the preferred embodiment, each earth headend 110, 112, 114, 370 or

372 tracks which videos have been played for the subscriber groups associated with that earth headend and also which videos have been selected by subscribers within each group. This compiled information is then provided to the central site. This tracking of information also assists when an algorithm is being used to provide programming oriented to the tastes of the subscribers in a specific group.

*Id.* at column 8, lines 47-57. However, Sartain is clear that the algorithm is used to send videos to subscribers for selection, but not for scheduling a showing of that video.

As stated above, the mix of video programs **sent** to a particular remote site can be determined from an algorithm. This algorithm takes into consideration the types of video programs being selected by the subscriber group associated with that particular remote site. In other words, the demographics of an area can have an impact on which video programs are sent to a particular subscriber group for selection. This algorithm can be located in office 330. As information on videos for a particular subscriber group is received, the determination of which videos will be **sent** to the associated remote site is based on the selections made by the subscribers in that group. Thus, particular types of videos may be **sent** to a particular group of subscribers.

*Id.* at column 11, lines 13-25 (emphasis added). Thus, the algorithm is used to determine which videos are sent to a remote site. A user may then select the videos at a later time. However, the algorithm is not used to **schedule** a broadcast of the video.

The Applicants respectfully submit that Sartain does not describe, teach or suggest “calculating at least one statistic, using the information related to the request [for consumption of media]; **identifying media** using the at least one **statistic**; **[and] scheduling the identified media** according to the at least one **statistic** [that is used to identify the media], for consumption via the communication network....” Thus, for at least these reasons, the Applicants respectfully submit that Sartain does not anticipate claims 1 and 7-8.

As amended, claim 9 now recites, in part, “calculating at least one statistic, using the information related to the request; identifying media using the at least one statistic; scheduling the identified media according to the at least one statistic....” For at least the reasons discussed above with respect to claim 1, the Applicants respectfully submit that Sartain does not anticipate claims 9, 15 and 16.

**II. The Proposed Combination Of Sartain And Lu Does Not Render Claims 2-6 And 10-14 Obvious**

The Applicants respectfully submit that the proposed combination of Sartain and Lu does not render claims 2-6 and 10-14 obvious for at least the reasons discussed above.

**III. The Proposed Combination Of Lu And Sartain Does Not Render Claims 17-26 Unpatentable**

As amended, claim 17 now recites, in part, “server software that receives, via the communication network, a notification comprising at least one of the associated network address and information related to the media selected for consumption, and responds by calculating at least one statistic, identifying media using the at least one statistic, and scheduling availability of the identified media according to the at least one statistic.” For at least the reasons discussed above, the Applicants respectfully submit that the proposed combination of Lu and Sartain does not render claims 17-26 unpatentable.

**IV. New Claims 27-35**

The Applicants respectfully submit that new claims 27-34 should be in condition for allowance for at least the reasons discussed above. The fee for these new claim is calculated below:

8 new claims in excess of 20<sup>1</sup> X \$50/claim = \$400  
1 new independent claim X \$210/claim - \$210  
**TOTAL = \$610**

**V. Conclusion**

In general, the Office Action makes various statements regarding the pending claims and the cited references that are now moot in light of the above. Thus, the Applicants will not address such statements at the present time. However, the Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

The Applicants respectfully request reconsideration of the claim rejections for at least the reasons discussed above. If the Examiner has any questions or the Applicants can be of any assistance, the Examiner is invited to contact the undersigned attorney.

The Commissioner is authorized to charge any necessary fees, including the \$120 fee for the one month extension of time and the \$610 fee for the new claims, or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

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<sup>1</sup> Note, claim 24 has been canceled without prejudice or disclaimer.